

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 3 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

SHIRISH MANIDHAR PARIKH

Versus

THE CONTROLLER OF ESTATE DUTY

Appearance:

M/S MG DOSHIT & CO for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 09/11/98

ORAL JUDGEMENT (per R. Balia, J.)

Heard the learned counsel appearing for the parties.

2. A reference under the Estate Duty Act, 1953 has

been made to this court by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' referring the following two questions of law arising out of Estate Duty Appeal No. 27/Ahd/82 decided by it on 24.10.1983. It relates to assessment of estate duty in the hands of accountable person of the estate of deceased Manidhar Punamchand Parikh who died on 4.11.1972.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the interest of the lineal descendants of the deceased in the joint family property should be taken for rate purposes under sec. 34(1)(c) of the State Duty Act?

2. If the answer to the question No.1 is affirmative, whether on the facts and in the circumstances of the case, the Tribunal was right in holding that while computing the value of the interest of the lineal descendants of the deceased in property of the Hindu Undivided Family which is to be included in the dutiable estate for rate purposes under section 34(1)(c) of the Act, the value of the house of the Hindu Undivided Family which was used for residence could not be excluded?"

3. The deceased was a member of H.U.F. consisting of himself, his wife Kusumben and his married son. The accountable person claimed exclusion of share of lineal descendants of the deceased in the H.U.F. property which was unobstructed heritage for the purpose of computing the estate of the deceased for the rate purposes under Sec. 34(1)(c) of the Estate Duty Act.

4. Learned Counsel for the assessee candidly stated that in view of decisions of this court in Gunvantlal Keshavlal v. Controller of Estate Duty, Gujarat reported in 134 ITR 533 as followed in Miss Minal A. Mehta v. Controller of Estate Duty reported in 200 ITR 216 and Natverlal Dahyabhai Mehta v. Controller of Estate Duty reported in 200 ITR 219 and in view of the fact that the decision of the Madras High Court in V.N.S. Sockalingam Chettiar v. Commissioner of Income-tax, Madras reported in 91 ITR 224 has since been disapproved by the Supreme Court in Assistant Controller of Estate Duty v. V. Devaki Ammal reported in 212 ITR 395 holding the provision to be intra vires, the questions referred to us

must be answered in the affirmative, that is to say, in favour of the Revenue and against the assessee. Accordingly we do so.

5. The questions referred to above are answered in favour of the Revenue and against the assessee following the aforesaid decisions. There shall be no order as to costs.

(hn)